

U.S. Department of Justice

February 6, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notice of *Ex Parte* Oral and Written Presentations:
CC Docket Nos. 02-33, 95-20 and 98-10; CS Docket No. 02-52; and
WC Docket Nos. 03-45, 03-211, and 02-361

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), the U.S. Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") hereby submit notice of *ex parte* meetings that occurred on February 5, 2004, with Commissioners Copps and Adelstein. In addition, we are enclosing for filing a copy of a DOJ letter faxed to John Rogovin on February 4, 2004.

The *ex parte* oral presentations included Commissioner Copps, his legal advisor Jessica Rosenworcel, Commissioner Adelstein, his legal advisors Lisa Zaina and Barry Ohlson. I attended the meetings on behalf of the DOJ. Patrick Kelley and Jon Pifer attended the meetings on behalf of the FBI.

The purpose of the meetings was to discuss the Communications Assistance for Law Enforcement Act ("CALEA"), 47 C.F.R. § 1001 *et seq.*, in the context of the above-referenced dockets.¹ Specifically, the DOJ and FBI reiterated their request that the Commission hold that CALEA applies to voice over IP services, wireline broadband Internet access service, and cable modem broadband Internet access service as the Commission issues its decisions in the pending proceedings.

We stated that our preference would be for the FCC to resolve CALEA matters as soon as possible. Further, our understanding is that the FCC would consider a CALEA rulemaking expeditiously, and we have no objection to the FCC proceeding with other business with that understanding, provided that CALEA applicability issues were expressly preserved in intervening rulings. We added that our petition requesting a CALEA rulemaking, which we expect to file shortly, will contain arguments that we believe could permit the FCC to pursue a deregulatory approach under the Telecommunications Act, but preserve CALEA's applicability. However, we emphasized that, if the FCC believes that such arguments would not be sustainable, then we would urge the Commission to ensure that CALEA applies to these services by whatever means appropriate.

¹ See *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002); *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, Declaratory Ruling and Notice of Proposed Rulemaking*, 17 FCC Rcd 4798 (2002); *Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Public Notice, WC Docket No. 03-45, DA 03-439 (rel. February 14, 2003); *In re Vonage Holdings, Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Public Notice, WC Docket No. 03-211, DA 03-2952 (rel. September 26, 2003); *In re AT&T's Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges*, Public Notice, WC Docket No. 02-361 (rel. November 18, 2002).

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In addition, please find enclosed a copy of the letter sent to John Rogovin, General Counsel of the Commission, on February 4, 2004, relating to the above dockets.

Respectfully submitted,

THE UNITED STATES DEPARTMENT OF JUSTICE

/s/ John G. Malcolm

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Enclosure

cc (via e-mail): Commissioner Copps and Jessica Rosenworcel;
Commissioner Adelstein, Lisa Zaina, and Brian Ohlson;
John Rogovin